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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 531 and 539

Pay Under the General Schedule and Conversions Between Pay Systems

AGENCY: Office of Personnel Management.
ACTION: Revocation of final rule.

SUMMARY: Passage of the Civil Service Reform Act of 1978 rendered regulations relating to salary retention for Federal employees and conversions between pay systems obsolete, thereby requiring their revocation.

EFFECTIVE DATE: April 21, 1981.

FOR FURTHER INFORMATION CONTACT: Gus Ghessie, Issuances and Instructions Staff, 202–632–4684.

SUPPLEMENTARY INFORMATION: Prior to approval of the Civil Service Reform Act of 1978 (CSRA), when an employee was converted from another pay schedule (e.g. the Federal Wage System) to the General Schedule, he or she was entitled to receive a rate of pay under the General Schedule which was not less than that which was received under the former schedule. Also, employees who were demoted through no fault of their own were, with certain exceptions, entitled to a two-year period of salary retention at the rate payable immediately prior to demotion.

The laws which provided for retention of salary in these two circumstances, section 5334(d) (for retention of salary upon conversion to the General Schedule) and section 5337 (for salary retention upon demotion) of title 5, United States Code, granted the Civil Service Commission authority to prescribe regulations to effectively administer their provisions. Pursuant to this authority, the regulations currently contained in Part 539 of title 5, Code of Federal Regulations, were prescribed to administer the provisions of section 5334(d), and regulations currently contained in subpart F of Part 531 of title 5, Code of Federal Regulations, were prescribed to administer the provisions of section 5337.

Title VIII of the CSRA, signed into law October 13, 1978, provides for grade and pay retention under certain circumstances when an employee's grade or pay would otherwise be reduced. The circumstances under which an employee is entitled to receive grade and pay retention under title VIII include those which were previously covered under section 5334(d) and 5337. Therefore, these two sections of law were repealed by section 801(a)(2) of title VIII.

Because of the repeal of section 5334(d), current and future employees converted to the General Schedule are not subject to 5 CFR Part 539. Also, no employee could have received the two-year period of salary retention under section 5337 after January, 1979, as the provisions of title VIII were effective the first day of the first pay period beginning on or after January 11, 1979. Therefore, no current employee is subject to the provisions of subpart F of 5 CFR Part 531 (the two-year period could not possibly extend beyond January, 1981).

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Director, Office of Personnel Management, certifies that this regulation will not have a significant economic impact on a substantial number of small entities, including small business, small organizational units and small governmental jurisdictions.

Under the authority of the Director, Office of Personnel Management, vested in section 1103 of title 5, United States Code, subpart F of 5 CFR Part 531 and 5 CFR Part 539 are hereby revoked.

(92 Stat. 1220, 5 U.S.C. 5365)

Office of Personnel Management.

Beverly McCain Jones,

Issuance System Manager.

[FR Doc. 81-11878 Filed 4-20-81; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

Perishable Agricultural Commodities; Clarification of Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service amends its regulations relating to unfair practices of misrepresenting perishable agricultural commodities received, shipped, sold or offered to be sold, in interstate and foreign commerce. This amendment is intended to further inform the public and affected members of the industry, as to the statutory requirement and the procedures being followed in cases involving alleged violations of the Perishable Agricultural Commodities Act of 1930.

EFFECTIVE DATE: April 21, 1981.

FOR FURTHER INFORMATION CONTACT: John J. Gardner, Chief, Regulatory Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Phone (202) 447–2272.

SUPPLEMENTARY INFORMATION: The purpose of this amendment is to codify and set forth in a single, ready reference the agency's procedures in administering Section 2(5) of the Perishable Agricultural Commodities Act (7 U.S.C. 499b(5)) for the benefit of the public and particularly, affected members of the perishable agricultural commodities industry. The Perishable Agricultural Commodities Act was enacted by Congress in 1930 in order to curb abuses in the marketing of perishable agricultural commodities in interstate and foreign commerce. The Act establishes a code of fair trading standards by prohibiting unfair and fraudulent practices as a means of protecting the growers, shippers, and

other distributors, dealing in such commodities. It also established a means for the enforcement of contracts by providing for the awarding of damages from licenses, or those operating subject to license, who breach their contractual obligations. The law is enforced through a system of licensing and provides penalties for violations of the statutory prohibitions. All commission merchants, dealers, and brokers engaged in business subject to the Act must be licensed. Since its enactment, the Act has been amended numerous times to respond to changes in the industry's trading practices.

Section 2(5) of the Act deals with the unfair practices of misrepresenting perishable agricultural commodities received, shipped, sold, or offered to be sold, in interstate and foreign commerce. This amendment is intended to further inform the public and affected members of the industry, as to statutory requirements and the procedures being followed in cases involving alleged violations of Section 2(5).

The amendment sets out what constitutes evidence of misrepresentation, clarifies what is not considered to be misrepresentation, delineates the specific procedure followed in informal settlement of misrepresentation violations, prescribes the use to be made of records of misrepresentation and the length of time such records are to be maintained, and describes the procedure followed in formal resolution of such matters.

It is important to note that the amendment does not represent any change in policy or procedure. The policy stated has been consistently followed in the past. The amendment merely codifies procedures and policy which have not heretofore been available in a single reference. Codification and publication of such a reference is in the public interest because if the affected industry is better aware of the Department's procedures and policy in such matters, misunderstandings between members of the industry as well as between government and industry will be minimized.

Because the amendment does not affect the rights of private parties nor enlarge or otherwise alter current regulations or recordkeeping requirements, but involves merely the publication of pre-existing agency policy for management and educational purposes, it is exempt from the President's January 29, 1981, Order postponing the effective dates of regulations. Moreover, and for the same reason, there will be no economic or other impact on small businesses under the Regulatory Flexibility Act (Pub. L. 96–354). Furthermore, this action has been reviewed under the Executive Order issued February 17, 1981, and, for the reasons stated above, it is determined not to be a "major rule."

It is further found that because the amendment is nonsubstantive and is merely a publication of procedures and policy regarding misrepresentation violations of the Act, it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making, and postpone the effective date until thirty days after publication in the **Federal Register** (5 U.S.C. 553).

To make the procedures being followed in administering Section 2(5) of the Perishable Agricultural Commodities Act (7 U.S.C. 499b(5)) readily identifiable and available in a single reference place to the public, and particularly, affected members of the perishable agricultural commodities industry, Title 7 CFR Part 46 Regulations (Other than Rules of Practice) is amended by adding paragraph (e) to read as follows:
§ 46.45 to read as follows:

PART 46—REGULATIONS (OTHER THAN RULES OF PRACTICE) UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930

§ 46.45 Procedure in administering Section 2(5) of the Act.

* * * * *

(e) *Summary of Procedure.* (1) *Compilation of authority.* The rules defining misrepresentation, including misbranding, and for determining liability and disposition of violations are contained in the Act (7 U.S.C. 499 *et seq.),* in particular Sections 2(5) and 8 (7 U.S.C. 449b(5) and 499h), Section 46.45 of the Regulations (7 CFR 46.45), the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By the Secretary (7 CFR 1.130 *et seq.*), and in the Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

(2) *Evidence of misrepresentation.* Evidence of misrepresentation or misbranding violations includes results of official inspections, audit findings, business records, or other documentation or testimony bearing on the subject. When a lot of fruits and vegetables has been officially inspected, and certification made that the descriptive markings on the container do not misrepresent the produce, but a subsequent inspection reverses the original finding (such as to grade, size, weight, etc.), the shipper/seller will *not* be charged with violation of the Act. However, the misrepresentation must be corrected before the lot is shipped, sold, or offered for resale.

(3) *Warning letters.* When informal settlement of liability is appropriate, violators are given two written warnings and an opportunity to take preventive action before formal action is considered. Warning letters include an explanation of the requirements of the Act and recommendations of actions which the violator can take to avoid future violations.

(4) *Informal sanctions.* Violations subsquent to the sending of the warning letters referred to above, other than flagrant violations, may be settled informally pursuant to paragraph (c)(1) of this section. This procedure permits the violator to resolve the matter by payment of a monetary penalty pursuant to a schedule set out in lieu of a formal proceeding.

(5) *Formal sanctions.* In cases involving repeated or flagrant violations of the Act, formal proceedings seeking the suspension or revocation of the violator's license may be instituted pursuant to the Rules of Practice governing such matters (7 CFR 1.130 *et seq.*). Except in cases of willfulness or where the public health, interest, or safety requires otherwise, a violator must be given written warning and opportunity to demonstrate or achieve compliance with the Act before its license can be suspended or revoked (5 U.S.C. 551 *et seq.*). The warning letters referred to above serve this purpose. If formal proceedings are instituted, the violator is afforded an oral hearing, if requested, before an Administrative Law Judge, an opportunity to appeal an adverse decision to the Department's Judicial Officer, and a further opportunity to appeal an adverse final decision to the appropriate United States Circuit Court of Appeals.

(6) *Use of record of misrepresentation.* A cumulative record of misrepresentation is maintained. It is used as a basis for determining whether a warning letter should be sent, whether informal settlement should be considered, and, if so, the amount of monetary penalty which is appropriate, or whether there is cause for instituting formal disciplinary proceedings seeking suspension or revocation of the violator's license. But after payment of a monetary penalty or after two years from the date of the last violation, no formal disciplinary use can be made of the previous record of violation. Records of misrepresentations shall be erased if there are no further violations in the twenty-four (24) month period immediately following the most recent

violation. However, if there has never been a twenty-four (24) month period free of any violation, then the violation record stands and the pattern may then be cited in a formal proceeding based on currently repeated or flagrant violations. The pattern may also be used as a reference to determine the appropriate monetary penalty for informal settlements.

Done at Washington, D.C. on April 15, 1981.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 81-11942 Filed 4-20-81; 8:45 am]

BILLING CODE 8410-02-M

DEPARTMENT OF ENERGY
Office of the Assistant Secretary for Conservation and Renewable Energy

10 CFR Part 474

[Docket No. CAS-RM-80-202]

Electric and Hybrid Vehicle Research, Development, and Demonstration Program; Equivalent Petroleum-Based Fuel Economy Calculation

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is prescribing procedures to be used in calculating the equivalent petroleum-based fuel economy value of electric vehicles which DOE is required to develop pursuant to section 503(a)(3) of the Motor Vehicle Information and Cost Savings Act, as added by Section 18 of the Chrysler Corporation Loan Guarantee Act of 1979. The equivalent petroleum-based fuel economy value is intended to be used in calculating corporate average fuel economy pursuant to regulations prescribed by the Environmental Protection Agency (40 CFR Part 600).

EFFECTIVE DATE: May 21, 1981.

FOR FURTHER INFORMATION CONTACT:

Robert S. Kirk, Electric and Hybrid Vehicles Division, Mail Stop 5H-004, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-8032.

Pamela M. Pelcovits, Office of General Counsel, Mail Stop GC-33, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-9516.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legislation

In an effort to conserve energy through the improved efficiency of motor vehicles, Congress, in 1975, passed the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163. Title III of EPCA amended the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 *et seq.*) (the Motor Vehicle Act) by mandating fuel economy standards for automobiles produced in, or imported into, the United States. This legislation, as amended, requires that every manufacturer or importer meet a specific corporate average fuel economy (CAFE) standard for the fleet of vehicles that the manufacturer produces or imports in any model year. Administrative responsibilities for the CAFE program are assigned to the Department of Transportation and the Environmental Protection Agency (EPA) under the Motor Vehicle Act. The Secretary of Transportation is responsible for prescribing the CAFE standard through model year 1984 (the CAFE standard for model year 1985 and subsequent model years is prescribed in the Motor Vehicle Act) and enforcing the penalties for failure to meet these standards. The Administrator of EPA is responsible for calculating a manufacturer's CAFE value.

Because electric vehicles do not consume fuel (as defined in section 501(5) of the Motor Vehicle Act) for propulsive power, they are not included in the Motor Vehicle Act definition of an automobile and, accordingly, were not included in the calculation of a manufacturer's CAFE value under EPA's regulations.

On January 7, 1980, the President signed the Chrysler Corporation Loan Guarantee Act of 1979 (Pub. L. 96-185) (the Act). Section 18 of the Act amended section 13(c) of the Electric and Hybrid Vehicle Research, Development and Demonstration Act of 1976 (Pub. L. 94-413) (the EHV Act) and directed the Secretary of Energy, in consultation with the Secretary of Transportation and the Administrator of EPA, to conduct a 7-year evaluation program of the inclusion of electric vehicles in the calculation of average fuel economy to determine the value and implications of such inclusion as an incentive for the early initiation of industrial engineering development and initial commercialization of electric vehicles in the United States. Section 13(c) of the EHV Act, as amended, directs the Administrator of EPA to implement the evaluation program by amending EPA regulations to include electric vehicles in calculating a manufacturer's CAFE value.

Section 18 of the Act also amends section 503(a) of the Motor Vehicle Act and directs the Secretary of Energy to determine equivalent petroleum-based fuel economy values for various classes of electric vehicles. The intent of this legislation is to provide an incentive for vehicle manufacturers to produce electric vehicles by including the expected high equivalent fuel economy of these vehicles in the CAFE calculation and thereby to accelerate the early commercialization of electric vehicles, pursuant to the requirements of section 503(a)(3) of the Motor Vehicle Act.

Section 503(a)(3) of the Motor Vehicle Act requires DOE to determine the equivalent petroleum-based fuel economy values for various classes of electric vehicles taking into account the following parameters:

(i) The approximate electric energy efficiency of the vehicles considering the vehicle type, mission, and weight;

(ii) The national average electricity generation and transmission efficiencies;

(iii) The need of the Nation to conserve all forms of energy, and the relative scarcity and value to the Nation of all fuel used to generate electricity; and

(iv) The specific driving patterns of electric vehicles as compared with those of petroleum-fueled vehicles.

B. Implementation

DOE proposed regulations at 10 CFR Part 474 that provide a method of calculating equivalent petroleum-based fuel economy values for electric vehicles on May 12, 1980 (45 FR 34008; May 21, 1980). The public comment period on these regulations ended on July 21, 1980. A public hearing was scheduled but was subsequently cancelled because no requests to speak were received.

On October 30, 1980, DOE completed the proposed rulemaking by proposing the values for the petroleum equivalency factors used in the calculation procedure (45 FR 73684; November 6, 1980). The purpose of this proposal was to incorporate the most recent projections of the price and quantity values of all fuels used to generate electricity from DOE's Energy Information Administration. These values are used in the determination of the petroleum equivalency factor for each model year of the 7-year evaluation period. The public comment period on these values ended January 5, 1981. A public hearing was scheduled but also was subsequently cancelled because no requests to speak were received.

As required by section 13(c) of the EHV Act, as amended, the Administrator of EPA has recently issued interim regulations to include

electric vehicles in calculating a manufacturer's CAFE value (40 CFR Part 600; 45 FR 49256; July 24, 1980).

As required by section 18 of the Act, DOE is today issuing the final regulations on the equivalent petroleum-based fuel economy of electric vehicles. This rule represents the initial DOE effort in the 7-year evaluation program on the value of the inclusion of electric vehicles in the CAFE calculation as an incentive to their commercial production. Pursuant to section 503(a)(3)(C) of the Motor Vehicle Act, DOE will review the rule annually and will propose changes as necessary. As mandated in section 13(c)(4) of the EHV Act, a progress report of this evaluation program will be issued each year as part of the DOE Electric and Hybrid Vehicle Program Annual Report to Congress, pursuant to section 14 of the EHV Act. This report will discuss the success of the program in providing an incentive to the production and commercialization of electric vehicles. Included in this report will be quantitative information on electric vehicle production and an assessment of the effect of the program on use of petroleum and other forms of energy. A final report will be provided to Congress in 1987, as required by section 13(c)(4) of the EHV Act.

C. Calculation Procedure

The following is a summary of the procedures for calculating the equivalent petroleum-based fuel economy values (in units of miles per gallon) of electric vehicles which DOE proposed on May 12, 1980, and October 30, 1980. The use of these procedures will provide fuel economy values for the various electric vehicles that manufacturers may produce. This calculation involves converting the actual electrical energy consumption of an electric vehicle (kilowatt-hours per mile) to miles per gallon and adjusting that figure to account for the legislative parameters ii through iv stated in I.A above. For a more detailed discussion of the calculation procedure, the reader should refer to the discussion in the preamble to the May proposal.

The methodology for determining the equivalent petroleum-based fuel economy of electric vehicles specifies a series of arithmetic steps. The mathematical form of the calculation is the following equation:

$FE = FE_{ee} \times PEF$

Where:

FE = the equivalent petroleum-based fuel economy,

FE_{ee} = the energy-equivalent fuel economy value (miles per gallon), and

PEF = the petroleum equivalency factor.

The petroleum equivalency factor (PEF) is defined as follows:

$$PEF = DPF \times \eta_t \times AF \times \frac{E_{total}}{\sum_i I_i V_i}$$

Where:

DPF = driving pattern factor

η_t = average national electricity transmission efficiency

AF = accessory factor

E_{total} = total amount of electricity generated from all fuel sources for the model year (quads)

I_i = input energy of fuel used to generate electricity from fuel source i (quads)

V_i = relative value factor of fuel source i

All of the above factors are listed in Tables I, II, and III for each model year of the 7-year evaluation program.

II. Discussion of Comments

A. General

(1) *Incentive of Including EVs in CAFE.*—Several comments were made on the concept of including EVs in CAFE. Most of these comments were highly supportive of the concept. However, one comment opposed providing an incentive on the grounds that it would make it easier for vehicle manufacturers to meet the CAFE requirements and would, therefore, result in lower fuel economy of internal combustion engine (ICE) vehicles.

Table I.—*Projections for Electric Energy Generation (Quads)*

	Input energy of fuels used to generate electricity					Total electricity generated (E_{total})
	Fuel oil	Natural gas	Coal	Nuclear	Hydroelectric and new technologies	
Year:						
1981	2.9	3.4	12.5	3.4	3.1	8.1
1982	2.5	3.3	13.3	3.4	3.2	8.4
1983	2.2	3.1	14.1	4.5	3.3	8.7
1984	1.6	3.0	14.9	5.1	3.3	8.9
1985	1.2	2.9	15.7	5.6	3.4	9.2
1986	1.2	3.0	16.3	6.1	3.4	9.6
1987	1.2	3.0	16.9	6.6	3.5	10.0

Table II.—*Projection for Relative Value Factors*

Year and fuel	Marginal price (dollars per million Btu)	Relative value factors
1981:		
Automotive gasoline	10.27	
Fuel oil	4.67	0.45
Natural gas	2.05	.20
Coal	1.37	.13
Nuclear energy	.54	.05
Hydroelectric and new technologies	.00	.00
1982:		
Automotive gasoline	10.75	
Fuel oil	5.03	.47
Natural gas	2.24	.21
Coal	1.46	.14
Nuclear energy	.55	.05
Hydroelectric and new technologies	.00	.00
1983:		
Automotive gasoline	11.24	
Fuel oil	5.40	.48
Natural gas	2.44	.22
Coal	1.55	.14
Nuclear energy	.56	.05
Hydroelectric and new technologies	.00	.00
1984:		
Automotive gasoline	11.72	
Fuel oil	5.76	.49
Natural gas	2.63	.23
Coal	1.64	.14
Nuclear energy	.57	.05
Hydroelectric and new technologies	.00	.00
1985:		
Automotive gasoline	12.21	
Fuel oil	6.13	.50
Natural gas	2.83	.23
Coal	1.73	.14
Nuclear energy	.58	.05
Hydroelectric and new technologies	.00	.00
1986:		
Automotive gasoline	12.40	
Fuel oil	6.30	.51
Natural gas	2.98	.24

Table II.—*Projection for Relative Value Factors*—Continued

Year and fuel	Marginal price (dollars per million Btu)	Relative value factors
Coal	1.78	.14
Nuclear energy	.60	.05
Hydroelectric and new technologies	.00	.00
1987:		
Automotive gasoline	12.59	
Fuel oil	6.47	.51
Natural gas	3.12	.25
Coal	1.83	.15
Nuclear energy	.62	.05
Hydroelectric and new technologies	.00	.00

Table III.—*Petroleum Equivalency Factor Calculation*

	Driving pattern factor (DPF)	Electrical transmission efficiency (η_t)	Accessory factor (AF)	Total electric energy generated (quads) (E_{total})	Sum of weighted primary energy source ($\Sigma I_i V_i$)	Petroleum equivalency factor
Model year:						
			1.00			1.9
1981	1.00	0.91	.90	8.1	3.8	1.7
			.81			1.6
			1.00			2.0
1982	1.00	.91	.90	8.4	3.9	1.8
			.81			1.6
			1.00			2.0
1983	1.00	.91	.90	8.7	3.9	1.8
			.81			1.6
			1.00			2.1
1984	1.00	.91	.90	8.9	3.8	1.9
			.81			1.7
			1.00			2.3
1985	1.00	.91	.90	9.2	3.7	2.0
			.81			1.8
			1.00			2.2
1986	1.00	.91	.90	9.6	3.9	2.0
			.81			1.8
			1.00			2.2
1987	1.00	.91	.90	10.0	4.2	2.0
			.81			1.8

The Act states explicitly that the purpose of including EVs in CAFE is "as an incentive for the early initiation of industrial engineering development and initial commercialization of electric vehicles in the United States." For this purpose to be achieved, a tangible incentive must be provided to the automobile manufacturers. One comment specifically urged that the regulations should provide manufacturers with a meaningful incentive. While initially the use of this provision could permit the production of less fuel efficient ICE product lines, the eventual mass production and sale of electric vehicles would result in the achievement of higher CAFE values.

(2) *Testing.*—Two comments indicated concern that the methodology might impose excessive testing requirements on EVs. One of these comments recommended a system of fixed values of equivalent fuel economy for several classes of EVs.

As proposed, this testing involves performance of the SAE test procedure using the J227a "C" cycle and the 54-mph, steady-speed cycle. In developing the proposed rule, DOE considered both a system of fixed equivalent mileage values and a methodology based on measured energy efficiency. The latter approach is favored because it produces an equivalent fuel economy value for a particular EV that is more representative of actual energy consumption. This approach is determined to be the best method of fulfilling the legislative requirement to determine values based on "the approximate electrical energy efficiency of the vehicles * * *" as stated in the Act. Furthermore, in consultation with the Department of Transportation, it was decided that an actual vehicle measurement of energy efficiency would be more appropriate for the overall CAFE program because it corresponds more closely with the existing fuel economy procedures for ICE vehicles.

After reviewing the public comments received in response to the proposed rulemaking, it is apparent that there is a significant concern with the burden caused by the imposition of a testing procedure. But while the use of this procedure does impose new testing requirements, this procedure involves considerably less testing and certification (and, therefore, was determined to be considerably less burdensome) than the exhaust emissions and fuel economy test procedures currently required for ICE vehicles. Nevertheless, DOE recognizes the significance of the concern with the burden that may be involved and its potential to prevent manufacturers from proceeding to take advantage of the incentives to be provided by the Act.

Accordingly, DOE is considering permitting, in the alternative, the use of a set of minimum electrical efficiency values. Under this alternative methodology, a vehicle manufacturer would have the option of (1) accepting the minimum established electrical efficiency values without testing or (2) attempting to obtain a better fuel economy value for a particular model type through the established test procedure. The first option, in effect, would guarantee a minimum equivalent fuel economy value for each model year and, therefore, would reduce the burden.

The inclusion of such an alternative methodology, which would include the establishment of actual minimum values, is, however, outside the scope of this final rulemaking. DOE will continue to evaluate the need for minimum electrical efficiency values and what these values will be. If such an approach is deemed appropriate, DOE will propose amendments to the final regulations issued today.

(3) *Complexity of the Methodology and Revisions to the Values.*—Two comments criticized the methodology for being too complicated and variable. Several of the factors used in the methodology depend on economic and technical conditions regarding the national generation of electricity. These factors are beyond the control of the vehicle manufacturers. As a result, the commenters both argued that vehicle manufacturers cannot accurately predict the actual equivalent fuel economy values of future products, which is important for long-range planning.

Another comment urged that the methodology retain some flexibility to accommodate changes during the course of the evaluation program and that it be responsive to data and suggestions of vehicle manufacturers.

All of the factors that may vary, other than the vehicle electrical efficiency value, are contained in a single term, the Petroleum Equivalency Factor (PEF). Values of the PEF have been defined in the rule for each model year of the 7-year evaluation period. Equivalent fuel economy is simply determined by converting the vehicle electrical efficiency into miles per gallon and multiplying by the corresponding PEF values.

The PEF values are based on the best available projections for the factors which comprise it. Because these are projections, there is a degree of uncertainty involved, and the values may change in future years. As required by Section 503(a)(3)(c) of the Motor Vehicle Act, the regulations must be reviewed annually. Revisions to the regulations or to the values used in this regulation may be required. However, in reviewing the regulations, DOE will consider the above comments and will take into account any potential impacts which may result. In making revisions, DOE will consider the effects of production lead times required by vehicle manufacturers and will issue advance notification whenever possible. In addition, any future amendments to these regulations will be proposed for public comment prior to implementation.

(4) *Energy Utilization Efficiency.*—One comment criticized the methodology for improperly considering the energy utilization efficiency of EVs compared with conventional vehicles. This comment stated that it is improper to use a scarcity factor to account for the different fuels used to generate electricity because it distorts the true energy efficiency of the resources. The Act requires that DOE consider the "relative value of all fuels used to generate electricity," and DOE has determined that the scarcity factor is an appropriate method of accounting for the major benefit of EVs in utilizing nonpetroleum energy resources. Another comment recommended that the methodology be based only on petroleum-derived fuels (oil and natural gas). The Act, however, requires DOE to consider all fuels used in the generation of electricity.

(5) *Small Volume Manufacturers.*—One comment stated that the methodology provides an incentive and, therefore, only benefits vehicle manufacturers that produce a large number of ICE vehicles. It is expected, however, that this rule will benefit the entire EV industry. The small manufacturers, while not directly affected, will benefit from the imporved technology and reduced cost of EV components which will result from mass production by the large manufacturers.

B. Specific Aspects of the Methodology

(1) *Driving Pattern Factor.*—Five of the comments specifically addressed the driving pattern factor. Three comments stated that the driving pattern factor is not needed because EVs should not be penalized for their projected lower annual usage. One comment recommended that the driving pattern factor should consider the fact that EVs will be used primarily in urban driving situations, where ICE vehicles are most inefficient. One comment recommended eliminating the driving pattern factor, or setting it at a value of 1.0, until better actual usage data becomes available.

The Act requires that "the specific driving patterns of electric vehicles as compared with those of petroleum-powered vehicles" be taken into account. The proposed driving pattern factor did this by projecting the percentage of annual mileage for which an EV could replace a conventional vehicle. The underlying assumption was that trips beyond the EV range would be made by an ICE vehicle, and the proposed driving pattern factor would have a negative effect on the equivalent petroleum-based fuel economy of an EV. After reviewing the comments, however, DOE recognizes that a simple ratio does not account for the greater efficiency of EVs in urban driving situations. Because there are a limited number of EVs in use, DOE believes that sufficient data on the actual driving patterns of EVs are unavailable. Accordingly, the driving pattern factor has been set at 1.0 throughout the 7-year period until better data are accumulated. DOE will review the driving pattern factor as part of the annual review of these regulations in accordance with Section 503(a)(3)(c) of the Motor Vehicle Act.

(2) *Accessory Factor.*—Three comments were received concerning the accessory factor. All three comments advocated that the accessory factor should be used only for the vehicle configurations actually to be equipped with petroleum-powered accessories. In the proposed rule, DOE discussed the appropriate treatment of petroleum-powered accessories on EVs at length. To simplify the calculation of equivalent petroleum-based fuel economy, DOE proposed to include a constant accessory factor in the petroleum equivalency factor to represent the estimated use of a petroleum-powered heater/defroster.

After reviewing these comments, DOE agrees that the accessory factor should be applied only to vehicle configurations to be equipped with petroleum-powered accessories. Because of the potential for significant additional petroleum comsumption on vehicles so equipped, one comment also suggested that air conditioning be included in the accessory factor. DOE agrees and is also including air conditioning as a petroleum-powered accessory.

The current EPA procedure for determining the fuel economy of ICE vehicles provides for including fuel consumption of air conditioning when more than 33 percent of a vehicle configuration will be so equipped. For EVs, DOE has determined that an appropriate accessory factor will be included in the petroleum equivalency factor when more than 33 percent of production will be equipped with either or both of the two major petroleum-powered accessories: heater/defroster and air conditioning.

Typical fuel consumption rates for these accessories have been determined to be 0.007 gal/mi for the heater/defroster and 0.009 gal/mi for air conditioning ("Electric Vehicles and the Corporate Average Fuel Economy," The Aerospace Corporation, May 1980, Table 4, page 4–4, available to the public as provided in the proposed rulemaking (45 FR 34009)). Assuming typical 10 percent usage rates for these accessories, as set forth in the proposed rule, an accessory factor of 0.90 is used for either petroleum-powered accessory. Correspondingly, an accessory factor of 0.81 is used for vehicle configurations with both petroleum-powered heater/defroster and air conditioning. An accessory factor of 1.00 is used for vehicle configurations with neither of these petroleum-powered accessories. Three separate Petroleum Equivalency Factors, using three accessory factors, are defined for each model year.

(3) *Relative Value Factor.*—Six comments were received on the relative value factor. Three comments advocated use of off-peak or time-of-day pricing in determining the marginal prices of fuels used to generate electricity. Although marginal prices of the fuels to the utilities usually do not vary by time of day, the relative amounts used of each fuel type will be affected by time of use. If most recharging of EVs is done during the off-peak hours, there will be greater usage of the base-load generating facilities, which generally use the cheaper and more abundant fuel resources. Conversely, one commenter raised the possibility that EVs recharged during the daytime or peak hours would use a greater proportion of the more expensive fuels.

Three comments specifically mentioned agreement with the concept of using marginal prices to represent the true value of all fuel resources. Two comments indicated that the marginal prices should omit all taxes. One commenter stated that the proportion of fuels used to generate electricity varies widely by geographic region of the nation and advocated the assignment of regional values so as to give the greatest EV incentive to those regions which generate electricity from the least expensive fuel resources.

The use of off-peak utility costing data in the methodology is not considered practical at this time. There are too many variables inherent in these data to develop reasonably accurate projections over the 7-year time frame. It would depend largely on the actual quantity of EVs in use, how and in which regions of the country they are used, and the effect of other utility loads. In addition, due to the projected decline in future usage of petroleum-fired generating facilities, DOE believes that the effect of off-peak pricing on the petroleum equivalency factor will also decline and will probably not be significant beyond 1985.

As explained in the October NOPR, the fuel price data are based on the marginal energy cost as defined by the Energy Information Administration. It includes all costs associated with the use or savings of an additional unit of fuel energy to the end user and is, therefore, considered to be the most appropriate value for the purposes of this rulemaking. DOE is currently in the process of developing "marginal fuel cost" projections by rule for the Federal Energy and Management Planning (FEMP) program under the Energy Security Act (Pub. L. 96-294). In an advance notice of proposed rulemaking (published October 7, 1980), DOE indicated that the projections would be based in part upon the published EIA definition of "marginal energy cost" used in this rulemaking (45 FR 66620). Further development in the FEMP rulemaking may be considered in future revisions to the values used in this rule.

Establishing different values of the relative value factors for different regions of the country would be contrary to the legislative requirement to consider the "national average electricity generation and transmission efficiencies" and would also serve to complicate the methodology unnecessarily.

(4) *Electricity Transmission Efficiency.*—Two commenters mentioned the electricity transmission efficiency. One indicated that the prescribed value of 0.9141 represents a good national average to account for transmission losses. The other commenter requested that the value be fixed permanently or for a minimum of 5 years and that any change which would lower EV equivalency be preceded by a 12-month notification period.

As explained in Section b(5) below, the electricity transmission efficiency was revised to 0.91 in the October NOPR to reduce the significant digits. The question of modification to the regulations was addressed above.

(5) *Significant Figures in the Calculations.*—One comment suggested that the data are not precise enough to warrant four significant digits in the calculations and that two significant digits would be more appropriate. This comment was considered applicable and was implemented in the October NOPR.

(6) *Energy Content of Gasoline.*—Two comments recommended using the lower heating value of gasoline (113,200 Btu/gal) instead of the higher heating value (125,071 Btu/gal) proposed in the NOPR. The reason given for this is that the lower heating value is a better representation of the amount of useful work that an engine can extract from the fuel.

The higher heating value is used because it represents the total energy content of the fuel source. Although the internal combustion engine can only utilize the lower heating value, for purposes of comparison with other energy sources (electricity, coal, nuclear), the higher heating value is appropriate.

C. Vehicle Test Procedures

Five comments were received relating to the test procedures for the measurement of vehicle electrical efficiency. Two comments recommended using the EPA driving cycles and test procedures instead of the SAE J227a "C" cycle and 54-mph, steady-speed cycle, as proposed. Another comment recommended using the SAE J227a "D" cycle alone for the near term and eventually going to the EPA cycle. The reason given for the preference of the EPA cycles and procedures is that vehicle manufacturers can maintain a common procedure for all of the vehicles they produce.

Two comments mentioned the potential problem that may develop if EVs are marketed which cannot meet the test cycle requirements for either acceleration or steady speed of 54 mph. One commenter recommended allowing the maximum sustained speed recommended by the manufacturer for those vehicles which cannot sustain 54-mph cruise speed.

The SAE procedure is widely used throughout the electric vehicle community for the determination of the energy efficiency of EVs. The procedures are well defined and are tailored to the unique requirement of EVs. A change to the EPA urban driving schedule would necessitate either (1) the development of a new set of procedures specifically for this rulemaking or (2) modification of the existing SAE procedures to utilize the EPA cycle. Both of these alternatives are considered unacceptable at this time. A new set of procedures would require extensive development and testing prior to implementation. Modification of the SAE procedures would entail several technical problems, including:

- The longer length of the EPA cycle (7 miles) would adversely affect the accuracy and repeatibility of the energy consumption measurements because only completed cycles are counted in the accumulated mileage.
- The greater acceleration rates in the EPA cycle could present a problem for EVs. The SAE procedure requires that the vehicle must be able to perform the selected driving schedule, whereas the EPA procedure requires only that the vehicle perform to its maximum capability. This could lead to wide variations in energy consumption measurements for EVs.
- For EVs, energy efficiency is determined by the energy required to recharge the batteries following completion of the test cycle. Battery recharge efficiency varies significantly with depth of discharge. As a result, the energy consumption should be measured over the maximum useful range of the vehicle. This eliminates the possibility of measuring energy consumption over a single driving cycle.

In view of these difficulties, the procedure proposed for measuring EV energy efficiency will be retained in its present form. However, DOE agrees with the comment regarding maximum speed and is revising the regulations to allow EVs that are unable to meet the 54-mph criuse speed for the steady-speed test to be tested at a lower speed in accordance with the definition of "maximum cruise speed" provided in the SAE J227a procedure.

D. Other Issues

(1) *Labeling.*—Although this issue was not addressed in the rulemaking, there were two comments on labeling of vehicles as to efficiency and range. One comment strongly encouraged such labeling to promote consumer awareness and to discredit unsubstantiated claims made by some vehicle manufacturers. These unsubstantiated claims, it was agreed, could have a negative impact on the entire EV industry. On the other hand, one comment expressed the view that published range and efficiency values could mislead the public and thereby create a bad image for EVs. It maintained that the driving cycles used in developing these values may not be representative of actual use in all cases, and discrepencies between test and actual use values could create an unfavorable public reaction.

Vehicle labeling is outside the scope of DOE's responsibility under the 7-year

evaluation program contained in the Act. Labeling of the fuel economy of ICEs is the responsibility of EPA, and these concerns should be addressed to that agency.

(2) *Effective Date of Regulation.*—One comment recommended that these regulations should not be effective until the first full model year following promulgation of the final rule.

DOE's regulations, which establish a calculation procedure, are in conjunction with the EPA implementing regulations, which EPA has determined to be effective with model year 1981.

III. Final Regulations

The regulations are adopted as proposed except for the modifications described below.

A. Driving Pattern Factor

Values of the driving pattern factor (DPF) used in the petroleum equivalency factor have been revised, as indicated in Table III. The DPF had been calculated on the basis of the percentage of annual vehicle miles which are accumulated on trips within the expected range limitation of EVs. The fact that EVs are expected to be used primarily in urban driving situations was not, however, included in calculating the DPF. Because ICE vehicles operate inefficiently in this mode due to the effects of stop-and-go driving, prolonged idling, and cold starts, there is a significant benefit for EVs. Although there are insufficient actual usage data to quantify this effect, it is known that fuel efficiency for ICE vehicles on the urban cycle is approximately 10 to 20 percent below that of the combined cycle, upon which the CAFE calculation is based. This reduction will tend to offset the previously proposed annual mileage percentage of approximately 85 percent. Therefore, until more definitive usage data on EVs can be obtained, the DPF is set at a value of 1.0.

B. Accessory Factor

The petroleum equivalency factor is revised so that it can be used for vehicle configurations which are to be equipped with none, one, or two petroleum-powered accessories. Two major accessory systems which are expected to have the greatest potential for usage of petroleum fuels, heater/defroster and air conditioning, are defined as pertroleum-powered accessories. An accessory factor (AF) for each of these accessories has been calculated based on expected fuel consumptions and usage rates. The accessory factors are defined as follows:

- No petroleum-powered accessories: AF = 1.00
- Petroleum-powered heater/defroster: AF = 0.90
- Petroleum-powered air conditioner: AF = 0.90
- Both petroleum-powered heater/defroster and air conditioner: AF = 0.81

The petroleum equivalency factors are calculated and defined for each of the three values of AF for each model year.

The criteria for application of a particular petroleum equivalency factor is that if more than 33 percent of the expected production volume of a vehicle model type are to be sold equipped with an accessory which uses a petroleum fuel, then the corresponding petroleum equivalency factor is used in the calculation of equivalent petroleum-based fuel economy value for that model type. To implement these changes, new definitions for model type and petroleum-powered accessories are included in § 474.2.

C. Test Procedures

The test procedure requires that a vehicle perform the SAE J227a procedure, "Range at Steady Speed," at a speed of 54 mph. Any electric vehicle that is incapable of maintaining a sustained speed (maximum cruise speed) of 54 mph may be permitted to perform this test procedure at the maximum cruise speed as defined in the SAE J227a procedure.

IV. Other Matters

A. Evironmental Review

Upon review of the Environmental Assessment ("Environmental Assessment—Inclusion of Electric and Hybrid Vehicles in CAFE Calculations"), DOE has determined that the program does not constitute a major Federal action significantly affecting the quality of the human environment and that, therefore, no Environmental Impact Statement need be prepared pursuant to the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

B. Regulatory Review

At the time this rule was proposed, it was determined that the proposed regulation was significant, as that term was used in Executive Order 12044 and amplified in DOE Order 2030. This determination was based on the importance of the overall electric and hybrid vehicle program in encouraging the development of alternative means of transportation. It was further determined that this regulatory action was not likely to have a major impact, as then defined by Excecutive Order 12044 and DOE Order 2030; consequently, no regulatory analysis was prepared with regard to the proposed rule.

Executive Order 12291, which revoked Executive Order 12044 on February 17, 1981, creates certain requirements for "major rules," as defined in the Order. It has been determined that this rule is not a "major rule" under the new order.

C. Urban Impact Analysis

This regulation has been reviewed in accordance with OMB Circular A–116 to assess the impact on urban centers and communities. In accordance with the DOE finding that the regulation is not likely to have a major impact, DOE has determined that no community and urban impact analysis of the rulemaking is necessary, pursuant to Section 3(a) of Circular A–116.

D. Coordination With the Secretary of Transportation and the Administrator of the Environmental Protection Agency

In developing this rule, DOE has consulted with the Secretary of Transportation and the Administrator of EPA, pursuant to section 13(c)(1) of the EHV Act.

E. An Appendix Showing a Sample Calculation Is Provided

Appendix.—Sample Calculation

Step 1

Assume that a 1983 model year electric vehicle was tested according to the procedures in § 474.3 and the following results were obtained:

stop-and-go electrical efficiency value = 0.34 kWh/mile
steady-speed electrical efficiency value = 0.26 kWh/mile

Step 2

The electrical efficiency value is then calculated, according to § 474.4(b), by averaging the above two values, weighted 0.91 and 0.09, respectively:

electrical efficiency value = (0.91 × 0.34) + (0.09 × 0.26)
= 0.33 kWh/mile

Step 3

The energy equivalent fuel economy value (FE_{ee}) is then calculated, according to § 474.4(c), by dividing the electrical efficiency value into 36.66 which is the number of kilowatt-hours equivalent to the energy content of 1 gallon of gasoline:

energy equivalent fuel economy = 36.66/0.33
FE_{ee} = 110.2 mpg

Step 4

The appropriate petroleum equivalency factor is then chosen according to § 474.4(d) by determining

the number of petroleum-powered accessories with which the vehicle configuration is to be equipped. Assume that the electric vehicle model type will be equipped with petroleum-powered accessories in the following percentages of total production volume:

- heater/defroster—80 percent
- air conditioner—10 percent

In accordance with § 474.4(d), only the heater/defroster is applicable, and the second petroleum equivalency factor value for the appropriate model year is used.

Step 5

The equivalent petroleum-based fuel economy is then calculated according to § 474.4(e) by multiplying the energy equivalent fuel economy by the second petroleum equivalency factor for model year 1983.

$FE = FE_{ee} \times$ Petroleum Equivalency Factor
$= 110.2 \times 1.8$
$= 198.3$ mpg

(Motor Vehicle Information and Cost Savings Act, Pub. L. 94–163, as amended by the Chrysler Corporation Loan Guarantee Act of 1979, Pub. L. 96–185; Electric and Hybrid Vehicle Research, Development and Demonstration Act of 1976, Pub. L. 94–413, as amended by the Chrysler Corporation Loan Guarantee Act of 1979, Pub. L. 96–185; Department of Energy Organization Act, Pub. L. 95–91.)

In consideration of the foregoing, Chapter II of Title 10 of the Code of Federal Regulations is amended by adding Part 474, as set forth below.

Issued in Washington, D.C., April 15, 1981.

Frank DeGeorge,

Acting Assistant Secretary, Conservation and Renewable Energy.

Chapter II of Title 10, Code of Federal Regulations is amended by adding Part 474 as follows:

PART 474—ELECTRIC AND HYBRID VEHICLE RESEARCH, DEVELOPMENT AND DEMONSTRATION PROGRAM; EQUIVALENT PETROLEUM-BASED FUEL ECONOMY CALCULATION

Sec.

Authority: Sec. 503(a)(3), Motor Vehicle Information and Cost Savings Act, Pub. L. 94–163 (15 U.S.C. 2003(a)(3)), as added by sec. 18, Chrysler Corporation Loan Guarantee Act of 1979, Pub. L. 96–185; Department of Energy Organization Act, Pub. L. 95–91.

§ 474.1 Purpose and scope.

This part contains procedures for calculating the equivalent petroleum-based fuel economy value of electric vehicles, as required to be prescribed by the Secretary of Energy under section 503(a)(3) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2003(a)(3)), as added by section 18 of the Chrysler Corporation Loan Guarantee Act of 1979. The equivalent petroleum-based fuel economy value is intended to be used in calculating corporate average fuel economy pursuant to regulations promulgated by the Environmental Protection Agency at 40 CFR Part 600—Fuel Economy of Motor Vehicles.

§ 474.2 Definitions.

For purposes of this part, the term—

"Electric vehicle" means a vehicle that is powered by an electric motor drawing current from rechargeable storage batteries or other portable energy storage devices. Recharge energy shall be drawn primarily from a source off the vehicle, such as residential electric service.

"Electrical efficiency value" means the weighted average of the stop-and-go and steady-speed electrical efficiency values, as determined in accordance with § 474.4(b).

"Energy equivalent fuel economy value" means the electrical efficiency value converted into units of miles per gallon, as determined in accordance with § 474.4(c).

"Equivalent petroleum-based fuel economy value" means a number, determined in accordance with § 474.4, which represents the average number of miles travelled by an electric vehicle per gallon of gasoline.

"Model type" means the term defined by the Environmental Protection Agency in its regulations at 10 CFR 600.002–81(19).

"Model year" means the tern defined by the Environmental Protection Agency in its regulations at 10 CFR 600.002–81(6).

"Petroleum equivalency factor" means a number which represents the parameters listed in section 503(a)(3)(ii)–(iv) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2003(a)(3)) for purposes of calculating equivalent petroleum-based fuel economy in accordance with § 474.4.

"Petroleum-powered accessory" means a heater/defroster system or an air conditioner system which uses fuel, as defined in section 501(5) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001) as its primary energy source.

"Production volume" means the term defined by the Environmental Protection Agency in its regulations at 10 CFR 600.002–81(32).

"Steady-speed electrical efficiency value" means the average number of kilowatt-hours of electrical energy required for an electric vehicle to travel 1 mile, as determined in accordance with § 474.3(c).

"Stop-and-go electrical efficiency value" means the average number of kilowatt-hours of electrical energy required for an electric vehicle to travel 1 mile, as determined in accordance with § 474.3(b).

§ 474.3 Test procedures.

(a) The conditions and equipment in the Electric Vehicle Test Procedure—SAE J227a of the Society of Automotive Engineers shall be used for conducting the test procedures set forth in this section.

(b) The test procedures prescribed in SAE procedure J227a, Vehicle Energy Economy, using Vehicle Test Cycle C for the driving cycle, shall be used for generation of the stop-and-go electrical efficiency value.

(c) The test procedures prescribed in SAE procedure J227a, Vehicle Energy Economy, using a driving cycle consisting of a maximum cruise speed of 54 mph, as prescribed in the SAE procedure for Range at Steady Speed, shall be used for generation of the steady-speed electrical value. For an electric vehicle model type that is incapable of maintaining a maximum cruise speed of 54 mph, this test procedure shall be conducted at the maximum cruise speed as defined in section 2.8 of the SAE procedure J227a.

§ 474.4 Equivalent petroleum-based fuel economy calculation.

(a) Calculate the equivalent petroleum-based fuel economy of an electric vehicle as follows:

(1) Determine the stop-and-go electrical efficiency value, according to § 474.3(b).

(2) Determine the steady-speed electrical efficiency value, according to § 474.3(c).

(b) Calculate the electrical efficiency value by:

(1) Multiplying the stop-and-go electrical efficiency value by 0.91;

(2) Multiplying the steady-speed electrical efficiency value by 0.09; and

(3) Adding the resulting two figures, rounding to the nearest 0.01 kWh/mile.

(c) Calculate the energy equivalent fuel economy value by dividing the electrical efficiency value into 36.66.

(d) For purposes of paragraph (e) of this section, use the appropriate Petroleum Equivalency Factor as follows:

(1) If no more than 33 percent of the production volume of the electric vehicle model type is to be equipped with any petroleum-powered accessories, use the first number listed under § 474.4(e) for the applicable model year.

(2) If more than 33 percent of the production volume of the electric vehicle model type is to be equipped with only one petroleum-powered accessory, use the second number under § 474.4(e) of the applicable model year.

(3) If more than 33 percent of the production volume of the electric vehicle model type is to be equipped with two petroleum-powered accessories, use the third number under § 474.4(e) for the applicable model year.

(e) Calculate the equivalent petroleum-based fuel economy value in miles per gallon by multiplying the energy equivalent fuel economy value by the appropriate petroleum equivalency factor for the model year in which the electric vehicle is manufactured.

(1) For model year 1981, the petroleum equivalency factor is:

(i) 1.9,

(ii) 1.7, or

(iii) 1.6;

(2) For model year 1982, the petroleum equivalency factor is:

(i) 2.0,

(ii) 1.8, or

(iii) 1.6;

(3) For model year 1983, the petroleum equivalency factor is:

(i) 2.0,

(ii) 1.8, or

(iii) 1.6;

(4) For model year 1984, the petroleum equivalency factor is:

(i) 2.1,

(ii) 1.9, or

(iii) 1.7;

(5) For model year 1985, the petroleum equivalency factor is:

(i) 2.3,

(ii) 2.0, or

(iii) 1.8;

(6) For model year 1986, the petroleum equivalency factor is:

(i) 2.2,

(ii) 2.0, or

(iii) 1.8; and

(7) For model year 1987, the petroleum equivalency factor is:

(i) 2.2,

(ii) 2.0, or

(iii) 1.8.

[FR Doc. 81-11959 Filed 4-20-81; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 353

Steel Bars, Reinforcing Bars, and Shapes From Australia; Final Results of Administrative Review and Revocation of Antidumping Finding

AGENCY: U.S. Department of Commerce, International Trade Administration.

ACTION: Notice of final results of administrative review and revocation of antidumping finding.

SUMMARY: On March 4, 1981 the Department of Commerce published the preliminary results of its administrative review and tentative determination to revoke the antidumping finding on steel bars, reinforcing bars, and shapes from Australia. The review covered the only known exporter, The Broken Hill Proprietary Co., Ltd. and the time period from January 1, 1975 through August 27, 1979. Interested parties were provided an opportunity to submit written comments or request disclosure and/or a hearing. The Department received no comments or requests for disclosure or a hearing.

EFFECTIVE DATE: April 21, 1981.

FOR FURTHER INFORMATION CONTACT: Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-2496).

SUPPLEMENTARY INFORMATION:

Procedural Background

On April 7, 1970, a dumping finding with respect to steel bars, reinforcing bars, and shapes manufactured by The Broken Hill Proprietary Co., Ltd., Melbourne, Australia, ("Broken Hill"), was published in the **Federal Register** as Treasury Decision 70-81 (35 FR 5610). On March 4, 1981, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of its administrative review and its tentative determination to revoke the finding (46 FR 15190-91).

The Department has now completed the administrative review of the finding.

Scope of the Review

Merchandise covered by this review is steel bars, reinforcing bars, and shapes currently classifiable under items 606.7900, 606.8310, 606.8330, 606.8350, 609.8035 and 609.8045 of the Tariff Schedules of the United States Annotated (TSUSA). The review is limited to the only known exporter of the merchandise, Broken Hill, and the period from January 1, 1975 through August 27, 1979.

Final Results of the Review

The Department received no comments or requests for disclosure or a hearing. Therefore, the final results of our review are the same as those presented in the preliminary results of review.

Determination

As a result of this review, the Department revokes the antidumping finding on steel bars, reinforcing bars and shapes from Australia. This revocation applies to unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 27, 1979. The Department will issue appraisement instructions directly to the Customs Service.

Annex I (Amended)

The table in Part 353, Annex I, Commerce Regulations (19 CFR, Annex I, 45 FR 8207) is amended under the country heading "Australia" by deleting from the column headed "Merchandise" the words "steel bars, reinforcing bars, and shapes manufactured by the Broken Hill Proprietary Co., Ltd., Melbourne, Australia" and from the column headed "T.D." the number "70-81."

This administrative review, revocation and notice are in accordance with section 751(a)(1) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1), (c)) and 353.54 of the Commerce Regulations (19 CFR 353.54).

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 81-11924 Filed 4-20-81; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by A. L. Laboratories, Inc., providing for use of bacitracin premixes to manufacture

complete feeds containing 10 to 30 grams of bacitracin per ton. The feed is used for growing finishing swine for increased rate of weight gain and improved feed efficiency.

EFFECTIVE DATE: April 21, 1981.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Bureau of Veterinary Medicine (HFV–147), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

SUPPLEMENTARY INFORMATION: A. L. Laboratories, Inc., 452 Hudson Terrace, Englewood Cliffs, NJ 07632, filed a supplemental NADA (46–592) providing for use of premixes containing either 10, 25, 40, or 50 grams of bacitracin (as bacitracin methylene disalicylate) per pound to manufacture a complete feed containing 10 to 30 grams of bacitracin per ton for growing and finishing swine. The medicated feed is used for increased rate of weight gain and improved feed efficiency.

Bacitracin methylene disalicylate at 10 to 100 grams per ton (g/ton) was in use for swine before October 10, 1962. The product was the subject of two National Academy of Sciences/National Research Council (NAS/NRC) notices published in the **Federal Register** of July 17, 1970 (DESI 0061NV; 35 FR 11531) and October 2, 1970 (DESI 0061NV; 35 FR 15408). The NAS/NRC notices concluded, and FDA concurred, that more information is needed for the growth claim in swine, and that these products are probably not effective for therapeutic claims in swine.

The revised claim represents a restricted use of the drug within the previously approved uses. Furthermore, bacitracin methylene disalicylate is currently permitted at 10 to 50 grams per ton for growth claims in 21 CFR 558.76. Therefore, the approval of this supplement will not result in a significant increase in the number of food-producing animals receiving medication. The Bureau of Veterinary Medicine concludes that approval of this supplemental NADA poses no increased human risk from exposure to residues of the new animal drug. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (December 23, 1977; 42 FR 64367), this is a Category II supplemental approval which does not require reevaluation of the human safety data supporting the parent application. The supplement is approved, and the regulation is amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 558.76 *Bacitracin methylene disalicylate* is amended in paragraph (e)(1) in the table by adding new item (iv) and renumbering existing items (iv) through (ix) as (v) through (x), as follows:

§ 558.76 Bacitracin methylene disalicylate.

* * * * *

(e) * * *

(1) * * *

Bacitracin methylene disalicylate in grams per ton	Combinations in grams per ton	Indications for use	Limitations	Sponsors
* * * * *				
(iv) 10 to 30		Swine: for increased rate of weight gain and improved feed efficiency.	For growing and finishing swine.	046573
* * * * *				

* * * * *

Effective date. April 21, 1981.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: April 2, 1981.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 81-11365 Filed 4-20-81; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 770

Rules Limiting Public Access to Particular Installations in Puerto Rico

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is adding Subpart D to 32 CFR Part 770 to set forth regulations governing access to United States Naval installations and properties in Puerto Rico. These regulations limit entry to authorized persons and describe procedures for obtaining such authorization.

EFFECTIVE DATE: April 21, 1981.

FOR FURTHER INFORMATION CONTACT: Commander Joe B. Durham, JAGC, U.S. Navy, Staff Judge Advocate, Headquarters, United States Naval Forces, Caribbean, Roosevelt Roads, Puerto Rico 00635; telephone (809) 863–2000 Ext. 5434.

SUPPLEMENTARY INFORMATION: Pursuant to the authority conferred by 5 U.S.C. § 301, 10 U.S.C. 6011 and as delegated in 32 CFR 700.714, the Commander, United States Naval Forces, Caribbean has adopted Base Entry Regulations governing access to United States Naval installations and property in Puerto Rico. These regulations limit access to military personnel and civilian employees, including contract employees, in the performance of their official duties, and to individuals who have obtained in advance the consent of the Commanding Officer of the installation or property concerned. It has been determined, in accordance with 32 CFR Part 296 and 32 CFR 701.57, that publication of these regulations for public comment prior to adoption is impractical, unnecessary, and contrary to the public interest because the nature and national importance of the operations conducted at installations covered by this Subpart, as well as the inherently dangerous conditions often existing at such installations, mandate the immediate and uninterrupted effectiveness of these regulations.

PART 770—RULES LIMITING PUBLIC ACCESS TO PARTICULAR INSTALLATIONS

Accordingly, 32 CFR Part 770 is hereby amended by adding a new Subpart D as follows:

Subpart D—Entry Regulations for Naval Installations and Property in Puerto Rico

Sec.
770.35 Purpose.
770.36 Definitions.
770.37 Background.
770.38 Entry restrictions.
770.39 Entry procedures.
770.40 Violations.

Authority: 5 U.S.C. 301; 10 U.S.C. 6011; 32 CFR 770.702 and 700.714.

§ 770.35 Purpose.

The purpose of this subpart is to promulgate standard regulations and procedures governing entry upon U.S. Naval installations and properties in Puerto Rico.

§ 770.36 Definitions.

For purposes of these regulations, U.S. Naval installations and properties in Puerto Rico include, but are not limited to, the U.S. Naval Station, Roosevelt Roads (including the Vieques Island Eastern Annexes, consisting of Camp Garcia, the Eastern Maneuver Area, and the Inner Range); the Naval Ammunition Facility, Vieques Island; and the Naval Security Group Activity, Sabana Seca.

§ 770.37 Background.

In accordance with 32 CFR 765.4, Naval installations and properties in Puerto Rico are not open to the general public, *i.e.*, they are "closed" military bases. Therefore admission to the general public is only by the permission of the respective Commanding Officers in accordance with their respective installation instructions.

§ 770.38 Entry restrictions.

Except for duly authorized military personnel and civilian employees, including contract employees, of the United States in the performance of their official duties, entry upon any U.S. Navy installation or property in Puerto Rico at anytime, by any person for any purpose whatsoever without the advance consent of the Commanding Officer of the installation or property concerned, or an authorized representative of that Commanding Officer, is prohibited.

§ 770.39 Entry procedures.

(a) Any person or group of persons desiring to obtain advance consent for entry upon any U.S. Naval installation or property in Puerto Rico from the Commanding Officer of the Naval installation or property, or an authorized representative of that Commanding Officer, shall present themselves at an authorized entry gate at the installation or property concerned or, in the alternative, submit a request in writing to the following respective addresses:

(1) Commanding Officer, U.S. Naval Station, Roosevelt Roads, Box 3001, Ceiba, Puerto Rico 00635.

(2) Officer in Charge, Naval Ammunition Facility, Box 3027, Ceiba, Puerto Rico 00635.

(3) Commanding Officer, U.S. Naval Security Group Activity, Sabana Seca, Puerto Rico 00749.

(b) The above Commanding Officers are authorized to provide advance consent only for installations and properties under their command. Requests for entry authorization to any other facility or property shall be addressed to the following:

Commander, U.S. Naval Forces, Caribbean, Box 3037, Ceiba, Puerto Rico 00635.

(c) Each request for entry will be considered on an individual basis and consent will be determined by applicable installation entry instructions. Factors that will be considered include the purpose of visit, the size of party, duration of visit, destination, security safeguards, safety aspects, and the military resources necessary if the request is granted.

§ 770.40 Violations.

Any person entering or remaining on U.S. Naval installations and properties in Puerto Rico, without the advance consent of those officials hereinabove enumerated, or their authorized representatives, shall be considered to be in violation of these regulations and therefore subject to the penalties prescribed by 18 U.S.C. 1382, which provides in pertinent part: "Whoever, within the jurisdiction of the United States, goes upon any military, naval * * * reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation * * * shall be fined not more than $500.00 or imprisoned not more than six months, or both," or any other applicable laws or regulations.

Dated: April 7, 1981.

P. B. Walker,

Captain, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 81-11913 Filed 4-20-81; 8:45 am]

BILLING CODE 3810-71-M

VETERANS ADMINISTRATION

41 CFR Parts 8-3 and 8-7

Small Purchases; Fixed-Price Supply Contracts

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: The Veterans Administration is amending its procurement regulations by revising provisions relating to the indemnification of the Government when contract maintenance services are performed on Government property and procured under the small purchase procedure.

EFFECTIVE DATE: This rule is effective April 21, 1981.

FOR FURTHER INFORMATION CONTACT: Tim Ganous, Policy and Interagency Service, Office of Supply Services, Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420, (202) 389-2334.

SUPPLEMENTARY INFORMATION: FPR 1-3.605 allows for the Standard Form 147, Order for Supplies or Services, to be supplemented with conditions and clauses appropriate to the services or items being procured. VA Form 60-2138 (or 90-2138), Order for Supplies or Services, is authorized for use in a manner similar to and in lieu of the SF 147. This change would establish criteria for adding to the VA Form 60-2138 (or 90-2138) a requirement for personal liability and property damage insurance for contractors performing services on Government property. The level of coverage will be the same as that required by the applicable state jurisdiction. This rule implements FPR 1-10.4, Insurance under Fixed-Price Contracts, by providing examples of special circumstances requiring indemnification of the Government.

This revision has been reviewed pursuant to the requirements of Executive Order 12291 and the Regulatory Flexibility Act (Public Law 96-354) and it is determined that the regulation is nonmajor and has no impact upon small business or state and local governments. Furthermore, this rule, as a part of the Federal Procurement Regulations system, implements guidance contained therein.

It is the general policy of the VA to allow time for interested parties to participate in the rule making process (38 CFR 1.12). This amendment, however, is primarily a matter of agency practice and procedures, and the public regulatory process is deemed unnecessary in this instance.

Approved: April 14, 1981.

Rufus H. Wilson,

Acting Administrator.

41 CFR Parts 8-3 and 8-7 are amended as follows:

PART 8–3—PROCUREMENT BY NEGOTIATION

1. In § 8–3.605–3, paragraph (a) is revised and a new paragraph (a)(1) is added so that the new and revised material reads as follows:

§ 8–3.605–3 Agency order forms.

(a) VA Form 60–2138 (or 90–2138), Order for Supplies or Services, and VA Form 60–2139 (or 90–2138), Order for Supplies or Services (Continuation), provide in one interleaved set of forms a purchase or delivery order, vendor's invoice, and receiving report. They will be used in lieu of and in the same manner as Standard Forms 147 and 148.

(1) When using VA Form 60–2138 (or 90–2138) for maintenance contracts involving services performed on Government property and which have the potential for property damage and liability claims, the Contractor Responsibility Clause found in 8–7.150–5 will be attached. Applicable maintenance contracts include but are not limited to window washing, pest control and elevator maintenance.

* * * * *

PART 8–7—CONTRACT CLAUSES

2. In § 8–7.150.5, paragraph (a) is revised by adding a new sentence to the clause contained in that paragraph so that the paragraph and the clause read as follows:

§ 8–7.150–5 Fixed-price service contracts.

(a) Fixed-price negotiated or advertised service contracts, other than architect-engineer and ambulance service contracts, will include the following clause:

Contractor's Responsibilities

The Contractor shall obtain all necessary licenses and/or permits required to perform this work. He/she shall take all precautions necessary to protect persons and property from injury or damage during the performance of this contract. He/she shall be responsible for any injury to himself/herself, his/her employees, or others, as well as for any damage to personal or public property that occurs during the performance of this contract that is caused by his/her or his/her employees' fault or negligence. The contractor shall maintain personal liability and property damage insurance prescribed by the laws of the State of ————. (*Insert the applicable State jurisdiction.*)

* * * * *

3. Section 8–7.150–6(c) is amended by revising a VA Form number, so that the paragraph reads as follows:

§ 8–7.150–6 Frozen processed foods.

* * * * *

(c) Field stations, when utilizing VA Form 60–2138 (or 90–2138), Order for Supplies and Services, to procure items of this nature in the open market, will amend the terms and conditions on the reverse thereof to include the clause shown in paragraph (b) of this section. (38 U.S.C. 210(c); 40 U.S.C. 486(c).)

[FR Doc. 81–11977 Filed 4–20–81; 8:45 am]
BILLING CODE 8320–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[FCC 81–127; File No. 22504–CD–P–79; Et Al.]

Interim Procedures To Govern Acceptance and Processing of Applications for One-Way Signaling Service at Frequencies in the Domestic Public Land Mobile Radio Service

AGENCY: Federal Communications Commission.

ACTION: Interim procedures.

SUMMARY: The FCC hereby lifts the freeze on 43 MHz Public Mobile Radio Services applications announced previously as part of the interim policy. That policy was adopted in response to television interference associated with paging operations on 43.22 and 43.58 MHz. After further review, the FCC has decided to lift the freeze and to monitor the potential for television interference in advance through developmental authorizations.

EFFECTIVE DATE: April 3, 1981.

FOR FURTHER INFORMATION CONTACT: Michael A. Menius, Common Carrier Bureau, (202) 632–6450.

SUPPLEMENTARY INFORMATION:

In the matter of interim procedures to govern acceptance and processing of applications for one-way signaling service at frequencies 43.22 MHz and 43.58 MHz in the domestic public land mobile radio service. Applications of COMEX, INC.: For authority to construct an additional transmitting facility for DPLMRS station WXS217 to provide one-way signaling service on frequency 43.22 MHz at Franklin, New Hampshire [File No. 22504–CD–P–79]; For authority to construct an additional transmitting facility for DPLMRS station WSI705 to provide one-way signaling service on frequency 43.22 MHz at Boston, Massachusetts [File No. 20074–CD–P–80]; Application of Paging-Western Washington—A joint venture for a Construction Permit in the Public Mobile Radio Services to establish a Wide-Area Paging System on Frequency 43.22 MHz at Eight Locations in the Northwestern Portion of Washington State [File No. 20873–CD–P–(8)–79]; Application of Earl R. Law & Bart E. Gonzales, d.b.a. Am-Tex Dispatch Service For a Construction Permit for facilities to operate on DPLMRS frequency 43.58 MHz at Amarillo, Texas [File No. 22274–CD–P–74]; Application of David R. Williams, d.b.a. Industrial Communications for authority to construct an additional transmitting facility for DPLMRS Station KWH302 to provide one-way signaling service on frequency 43.58 MHz at Logan, Utah [File No. 22190–CD–P–79].

Memorandum Opinion and Order

Adopted: March 26, 1981.

Released: April 3, 1981.

By the Commission: Chairman Ferris not participating.

1. The Commission has before it six petitions seeking reconsideration or review of the above-captioned interim procedures. These procedures relate to paging frequencies 43.22 and 43.58 MHz and television interference associated with paging operations on these frequencies. The following pleadings were filed by the parties indicated:

(a) Telocator Network of America (Telocator): petition for reconsideration;

(b) Am-Tex Dispatch Service (Am-Tex) and other radio common carriers: application for review and petition to stay;

(c) RAM Broadcasting Corporation (RAM): petition for reconsideration;

(d) ComEx, Inc. (ComEx): application for review;

(e) Paging-Western Washington: petition for reconsideration; and

(f) David R. Williams, d.b.a. Industrial Communications: application for review.

The petitioners challenge the Commission's interim policy as set forth in its *Order* [1] released March 3, 1980, and suggest certain alternate procedures. We will first discuss the interim policy and the circumstances leading up to its implementation. Then we will examine the matters raised by the petitioners.

Background Discussion

2. The Commission's interim policy concerns two paging frequencies in the Public Mobile Radio Service, 43.22 MHz and 43.58 MHz. These frequencies were allocated for land mobile use in 1949 in the General Mobile Radio Service

[1] 77 FCC 2d 94 (1980).

proceeding (13 FCC 1190).[2] Over the years the Commission has received and investigated complaints from members of the public concerning television interference (TVI) associated with paging operations on the two MHz frequencies.[3] We have received a particularly large number of complaints from TV viewers concentrated in areas of Atlanta, Georgia, Palo Alto, California, Orangevale, California, Watseka, Illinois, and Randolph, Massachusetts. The interference situation at 43 MHz is a narrow aspect of a larger problem which the Commission is considering in General Docket No. 78-369 ("Radio Frequency (RF) Interference to Electric Equipment").[4] In that proceeding, the Commission stated that the number of interference complaints received at the FCC has greatly increased and that many such complaints concern radio frequency (RF) emissions which are intercepted by electronic equipment not designed or intended to receive the signals. This description applies to the 43 MHz TVI phenomenon.

3. Intermediate frequency (IF) amplification occurs in most TV sets in a range which includes the two 43 MHz frequencies, and it appears that radiation from a one-way signalling station may penetrate a TV set cabinet, bypassing the antenna system or follow other routes to enter the IF amplifier directly. There it undergoes amplification and eventually is observed as both audio and video interference, often to all channels.

4. The Commission has no rules governing the susceptibility of television receivers to interference. Under the Commission's equipment authorization program, receivers are certificated with regard only to their potential to *cause* interference. They still may be susceptible to electromagnetic interference. Receivers in close proximity to a paging transmitter are more likely to receive interference than those farther away. This susceptibility may be due to factors such as ineffective filtering and shielding of the TV set. The significant point is that 43 MHz TVI is generally not the result of violations of Commission regulations or other improper activity.

5. Attempts to solve the interference problems have met with varying degrees of success. In responding to interference complaints, the Commission field personnel have followed the procedure of first ascertaining that the carrier's 43 MHz paging operations are conducted in accordance with the power and emission limitations specified in the carrier's authorization. Field personnel have then worked closely with individuals experiencing TVI, often by bringing one or two television sets, for testing and demonstration purposes, to the home or other location where interference is severe. These sets are either state-of-the-art receivers or are equipped with high-pass filters, traps, and copper screening (which has been mechanically installed inside the set). The field personnel are typically able to demonstrate interference-free operations on the television sets which they have brought with them. By temporarily attaching filters or traps to the outside of the television sets on which interference has been experienced, the field personnel have in some cases been able to eliminate or significantly reduce TV interference. In other cases the interference has persisted in spite of the use of filters.[5] Informal reports from some carriers have similarly indicated mixed results in solving the problem of 43 MHz TVI.[6]

6. Reports from the Commission's field offices indicate that in the areas where TVI does take place, the problem is usually significant, affecting a substantial number of members of the public. Not only are a large number of receivers involved, but in the typical case, all channels are affected leaving little or no opportunity to receive undisturbed programs during the broadcast day. There clearly is a demand for paging service across the nation, and there clearly is a demand for interference-free television broadcast service. In order to enable the Commission to examine these various considerations, the interim policy was adopted. This policy imposed a temporary freeze on new applications for 43 MHZ paging facilities and further provided that 43 MHz applications already on file (as well as applications filed in the future to expand existing 43 facilities) would be granted on a developmental basis only. The interim policy specified that the developmental tests for TV interference must include quarterly surveys of the TV viewers in the vicinity of the 43 MHz transmitter(s).

Discussion

7. Telocator objects that the Commission has substantially overreacted to the perceived TVI problem in establishing an interim policy which has an unnecessarily burdensome and sweeping effect. As a result of the interim policy, Telocator contends, the availability of adequate paging service to tens of thousands of consumers has been substantially impaired.

8. The Commission fully appreciates how the unavailability of these paging channels frustrates attempts to meet the public's growing demand for paging services. In adopting its interim policy, however, the Commission attempted to impose only those restrictions on paging operation minimally necessary to respond promptly and adequately to an interference problem. In our judgment, the 43 MHz TVI problem is a serious matter which merited prompt attention; a temporary freeze afforded the Commission an opportunity to review and reflect upon this matter and to design an adequate solution. After careful consideration we have determined that it is not necessary to maintain a freeze on new applications as set forth in the order announcing the interim policy. The interference problem has not increased dramatically in scope as was the Commission's concern at the time when the freeze was imposed. Additionally, as indicated above, the 43 MHz TVI situation is currently under study as part of the Commission's general inquiry into radio frequency interference to electronic equipment. For the present time, the Commission can manage the 43 MHz TVI situation through a developmental grant policy. In individual cases where an interference problem arises, the staff will be able to take action on an ad hoc basis. Rules Sections 22.404–22.406. 47 CFR §§ 22.404–22.406. Accordingly, the Commission will again accept applications for authority to construct paging facilities on frequencies 43.22 and 43.58 MHz.

9. Such applications will be granted on a developmental basis only, the same as we have been doing and will continue to do for applications proposing to

[2] Frequency 43.22 MHz was reallocated for paging use in 1957. See Commission First Report and Order, Docket No. 11995, FCC 57-1356, 22 FR 10220, Dec. 12, 1957. This frequency was originally allocated for radiotelephone service.

[3] See, for example, *Charles P. B. Pinson, Inc.* v. *F.C.C.*, 321 Fed. 2d 372 (D.C. Cir. 1963), describing a 43 MHz television interference situation which began shortly after issuance of license in 1958.

[4] See "Notice of Inquiry," 70 FCC 2d 1685, released November 24, 1978.

[5] See February 27, 1980, memorandum from Engineer-in-Charge, Atlanta, to Chief, Enforcement Division, File 1120-A. See also Report No. SF-79-28 (Tel-Page, Inc., Oakland, California, KMB-305). See also Feb. 5, 1979, complaint letter from Robert Harris, Service West (related to Tel-Page, Inc.) in which complainant states that installation of filters did not solve TVI problem.

[6] See Am-Tex petition for reconsideration, Exhibit F-1 (affidavit of S. Wolf), in which a carrier describes its ongoing policy of providing and installing filters to solve TVI problems. The licensee has recently indicated informally, however, that the scope of the problem has increased to the point that the carrier has decided to propose relocation of transmitters in order to eliminate interference.

expand existing systems.[7] We do not contemplate, as some parties feared, cancellation of a developmental grant on the basis of a few isolated complaints of interference. The Commission's concern is with a pattern of ongoing interference of a serious nature. In cases where a developmental grant is issued for the relocation of transmitting facilities and a serious interference problem is subsequently demonstrated, the grantee will have the option of returning its transmitting facilities to the former site.[8] In cases where a developmental grantee proposes a wide-area paging service with multiple transmitters, we also will allow wide latitude to the grantee to decide the order in which the developmental tests will be conducted; i.e., we will permit developmental tests to be conducted on a phased basis, with the schedule selected by the grantee.[8a] We emphasize here the Commission's intention to be flexible in responding to the particular circumstances of a given case. At the same time, persons contemplating filing an application to construct 43 MHz paging facilities should be aware of the economic risks associated with solving interference problems which may develop. Solutions such as installing filters on television sets or other similar remedial measures may prove to be a significant business expense and in the past have not eliminated interference in all cases. Other options, which may also prove costly, include reducing power output as well as modifying the number of configuration of antenna sites, or changing to other paging frequencies where available. The decision to seek Commission authority to construct 43 MHz paging facilities should be an informed one, based on all relevant economic and other factors. To summarize, the Commission is lifting the freeze on 43 MHz paging applications while maintaining the developmental grants procedure. This action in our view will balance the need to make available as many channels for paging as possible while at the same time affording us the necessary tools to quickly respond to any problems that develop.

10. Am-Tex requests [9] that the Commission give consideration to a recent Commission decision, *Metropolitan School District of Wayne Township,*[10] which, in the view of Am-Tex, the commission disregarded in promulgating the interim policy. Am-Tex quotes language from the Commission's decision which refers to interference problems related to receiver design and suggests that the interference problem should be cured at the receiver rather than through spectrum reallocation. We would note, however, that the Commission in *Wayne Township* did attach conditions to the construction permit granted in that proceeding which were very similar to those specified under the interim policy; i.e., the permittee was required to take steps to resolve any interference which may develop. The Commission further stated that, if an unsolvable problem should be demonstrated, the permittee's authorization would be either modified or suspended, or action on the license application would be deferred, or the construction permit would be revoked and a hearing on the proposal would be instituted. We therefore reject the contention that the *Wayne Township* case undermines or is inconsistent with the interim policy or the action taken herein.

11. Both Telocator and Am-Tex contend that the interim policy singles out the radio common carrier (RCC) industry for discriminatory treatment. The petitioners argue that there are hundreds of assignable frequencies in land mobile radio services between 42 and 46 MHz (the band in which TVI can be caused) only two of which are available for assignment to RCCs. This argument is based on a misunderstanding of the thrust of the interim policy which is not directed at all frequencies on which TVI can theoretically be caused. Rather, the interim policy responds to the interference problem which has in fact developed. Field office reports indicate that TVI is occurring within close proximity of transmitters providing paging to the public on 43 MHz. Rather than singling out any particular group or frequency band, the interim policy was a response to an interference problem which has manifested itself. Our interim policy and our present lifting of the 43 MHz freeze demonstrate the Commission's concern with minimizing any adverse impact on 43 MHz paging service while adequately responding to a very real interference problem.

11a. Telocator also contends that the policy unfairly distinguishes between RCC services in the 43 MHz band and the Special Emergency Radio Service in the same frequency band. Field office reports, however, indicate substantial evidence of interference associated with public paging systems and no such evidence in the case of 43 MHz paging systems in the Special Emergency Radio Service. There is also currently no expectation of increased usage in the private radio area as there is with regard to the common carrier services. Because we are sensitive to the possibility that a TVI problem may occur in the private radio area, however, we will monitor those services and will take whatever action is appropriate if interference is found to occur.

12. *Paging-Western Washington (PWW).* In its petition for reconsideration, PWW states that it proposes a wide-area paging service extending from Olympia, Washington, northward to the Canadian border. The application demonstrated a substantial unsatisfied need for such a wide-area service. Such a proposal represents a substantial undertaking involving eight transmitters and estimated construction costs of $170,000, not including paging receivers. The petitioner expresses its concern that, under the terms of the developmental grant, the risk that the authorization will be cancelled is too great to justify such a substantial undertaking. PWW has therefore rejected the developmental grant as it was conditioned and seeks a modification of the terms of grant.[11]

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[7] The terms of the developmental grant, pursuant to Section 22.404(a) of the Rules, will be for one year, and the grant shall be subject to cancellation without hearing by the Commission at any time, upon notice to the licensee of TV interference. Developmental reports shall be required under Section 22.406(a)(1), including, but not necessarily limited to, surveys of the TV viewing public within a few miles of the base station to ascertain whether their viewing is being impaired substantially by the operation of the one-way station. The staff will consider alternatives to the survey procedures described above, provided that any such alternative proposal is equally effective and accurate as the survey requirement without shifting the burden to members of the public. In the event of a developmental grant, the applicant will be required to agree to inform its potential customers of the possibility of cessation of its service if TV interference occurs. The developmental grant procedure contemplates close coordination with the Commission's local field office. Copies of developmental reports must be submitted both to the Mobile Services Division and to the local field office. Grantees will be required to work closely with field personnel in investigating and solving interference problems which may occur.

[8] The question of relocation of transmitting facilities was raised by Am-Tex and was the basis for its Petition to Stay. Since the grantee has the option of returning to its former site, the need for stay is obviated.

[8a] If Am-Tex or other developmental grantees should request an extension of time within which to construct paging facilities, the staff will review such requests on an individual basis.

[9] *See* Am-Tex "Request that Recent Commission Decision Relevant to Pending Petition for Reconsideration Be Considered," filed April 23, 1980.

[10] 75 FCC 2d 601 (1980), *recon. denied, Memorandum Opinion and Order,* FCC 80-466, released August 20, 1980; *Appeal pending sub nom.* McGraw-Hill Broadcasting Co., Inc. V. FCC, D.C. Cir. Case No. 78-1895.

[11] PWW does not seek an unconditional grant of its application.

Rather than commence construction on all eight transmitters, PWW proposes a phased developmental and testing program beginning with the base stations located in areas with the greatest density of television viewers. PWW states that it could thereby limit its financial risks by making a more modest initial investment and proceeding on the basis of the first phase of the developmental tests. PWW proposes a 90-day testing period rather than one year as specified in the developmental grant. PWW also proposes an alternative to the survey method delineated in the developmental grant.[12]

13. We understand the proposed testing program submitted by PWW to be not a challenge to the interim policy itself but rather a request for flexibility in applying the policy in view of the circumstances surrounding the wide-area service proposal of PWW. As much as possible, we will permit PWW (and other developmental grantees) maximum flexibility in conducting developmental tests. For example, concerning the PWW proposal to conduct tests on a phased basis, we will leave the order of developmental testing to the discretion of PWW. The grantee will be permitted to file an application for license to cover in part, for those sites at which developmental tests have been completed. We will, however, reject the proposal to conduct tests within a developmental period abbreviated to less than one year. Because interference conditions may vary significantly as a result of changing weather conditions during the four seasons of the year, we consider it crucial to receive developmental reports as to any TVI which may occur during each of the four quarters in the one-year testing period.

14. PWW further requests, as an alternative to the survey procedures specified in the developmental grant, that PWW be permitted to use voice messages transmitted in the trial paging signals. These voice messages would provide a telephone number for television viewers to call in the event that interference to television reception is being received. We are not persuaded at this point that voice messages as proposed in this case are an effective alternative to contacting television viewers by survey. In some cases, for instance, the interference experienced is not audible, affecting only the screen image. There has been no demonstration that the voice message would in all cases be transmitted in an intelligible form. We will not, therefore, permit the voice test proposal submitted by PWW as an alternative to the specified survey procedures. Our action on the PWW proposal is not intended to imply that proposed alternatives to the survey method will in all cases be rejected; nor do we imply that voice messages are in all cases impermissible. The staff will give serious consideration to whether other proposals for voice test reports, or any other proposed alternatives, are equally effective and accurate as our survey requirement, without shifting the burden to members of the public.

15. PWW also requests that the testing and licensing procedures set forth above not be applicable to PWW location #1 (Tacoma, Washington), where PWW is currently providing local paging service. In proposing wide-area paging in Tacoma, PWW states that the radiating characteristics for wide-area service will be the same as for the existing local paging facilities. PWW contends that, since no reports of TVI have been received in connection with the local paging service, developmental tests should not be required prior to implementing wide-area service in Tacoma. The developmental testing procedures contemplate surveys in which the grantee actively communicates with members of the television viewing community in order to ascertain whether TVI is occurring. In other words, it is not sufficient for a grantee to report merely that no TVI complaints have been received. This is essentially what PWW urges, i.e., an exemption from developmental tests because up to this point PWW, without contacting television viewers, has received no TVI complaints. Moreover, PWW now proposes a significant increase in the number and frequency of paging transmissions in Tacoma as a result of the implementation of wide-area service. Such an increase has typically been a factor in those communities where TVI has developed. Under the circumstances, we consider it necessary to receive developmental reports before granting permanent authority to expand paging operations in Tacoma as PWW proposes.

16. *ComEx application for review.* ComEx requests Commission review of developmental grant of the two above-captioned ComEx applications. ComEx argues that there is no factual basis for a Commission finding that TVI would occur, and that the Commission therefore erred in denying the ComEx applications without hearing. The Commission did not, however, deny the applications; instead ComEx was granted developmental authority. ComEx further contends that it is inconsistent with Commission policy to place conditions on an authorization so as to protect against interference which is due to substandard receiver design. We reject the characterization of this very complex problem as stemming simply from "substandard receiver design." As discussed above, paragraph 4, 43 MHz TVI is not the result of violations of Commission regulations. No standards for receiver design have at this point been violated. The range of susceptibility to TVI varies widely among television receivers available in the marketplace. This has always been the case, and the possibility for 43 MHz TVI has always existed, although it was not common. In recent years, however, with expanded use of 43 MHz paging in residential areas, this theoretically possible TVI situation has become a reality of increasing proportions. The interference problem, therefore, occurs in a changing environment and involves the interplay of a number of factors rather than stemming solely from receiver design. In General Docket No. 78–369 the Commission is examining the general question of radio frequency interference. Our action in the instant proceeding is an attempt adequately to respond to a specific interference problem while taking into consideration the various communications needs of the public.

In our view, the developmental grant policy is fully consistent with Commission policy and is in the public interest.

17. ComEx requests authority to conduct 90-day tests. For the reasons previously stated, we consider it necessary to receive developmental reports based on the full one-year testing period.

18. *David R. Williams d/b/a Industrial Communications application for review.* The points raised by David R. Williams in its application for review were also raised by the other petitioning parties and have been disposed of in the discussion above.

19. The developmental grant procedures set forth herein relate to matters of practice and procedure before

[12] Under the terms of the developmental grant, the grantee must conduct surveys within a two-mile radius of the base stations granted. Each quarter a minimum of 25 TV viewers, distributed approximately evenly throughout the areas, are to be contacted concerning TV interference. The grantee must report to the Mobile Services Division and to the local field office any TV interference complaints received and must take the necessary steps to cure the problem. Each quarter the grantee must survey an additional (and different) 25 TV viewers. The grantee must submit written quarterly reports to the Mobile Services Division and fully evaluate whether any interference problems continue to exist.

the Commission. Therefore, pursuant to Section 553(b)(A) of the Administrative Procedure Act (the APA) (5 U.S.C. 553(b)(A)), a rulemaking in accordance with Section 553 of the APA is not required. Moreover, based on our observation of the interference situation as described above, we consider it in the public interest to put these procedures into effect immediately. *See* Section 553(b)(13) of the APA.

20. Authority for the adoption of these procedures is contained in Sections 4(i) and 303(r) of the Communications Act, as amended.

21. Accordingly, in view of the above, it is ordered, that the petition for reconsideration filed by Telocator is granted in part and denied in part.

22. It is further ordered, that the petition for reconsideration filed by RAM Broadcasting Corporation is granted in part and denied in part.

23. It is further ordered, that the petition for reconsideration filed by Paging-Western Washington is granted in part and denied in part. The application of Paging-Western Washington is granted on a developmental basis subject to the conditions specified in the discussion above.

24. It is further ordered, that the application for review filed by Am-Tex is granted in part and denied in part. The staff's grant of developmental authority to Am-Tex is affirmed. The petition to stay filed by Am-Tex is dismissed.

25. It is further ordered, that the application for review filed by ComEx is granted in part and denied in part. The staff's grant of developmental authority to ComEx is affirmed.

26. It is further ordered that the application for review filed by David R. Williams d/b/a Industrial Communications is granted in part and denied in part.

27. It is further ordered that the developmental grant procedures delineated above are effective immediately.

28. The Secretary is directed to cause a copy of this *Memorandum Opinion and Order* to be published in the **Federal Register.**

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 81-11965 Filed 4-20-81; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 80-244; RM-2650; FCC 81-80]

Radio Broadcast Services; Presunrise Service Authorizations; Correction

AGENCY: The Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: In the *Report and Order* In the Matter of Amendment of § 73.99 of the Commission's Rules, BC Docket 80-244, FCC 81-80, on presunrise service authorizations, the amended rule paragraphs are incorrectly numbered. This eratta renumbers those rules paragraphs.

DATE: Effective April 17, 1981.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Robert A. Hayne, Broadcast Bureau, (202) 632-6485.

SUPPLEMENTARY INFORMATION:

In re the matter of amendment of § 73.99 of the Commission's Rules; correction.

Released: April 3, 1981.

In the above-captioned *Report and Order*, FCC 81-80, released March 9, 1981 (46 FR 20677; April 7, 1981), the paragraphs in amended § 73.99 are incorrectly numbered. The corrected Appendix to this *Report and Order* should read as follows:

In § 73.99, paragraphs (a)(1), (b)(2)-(4) and (d)(2)(i) are revised to read as follows:

§ 73.99 Presunrise service authorizations (PSA).

(a) * * *

(1) Class II stations operating on Class I channels, except those operating on Canadian Class I-A clear channels and those located east of co-channel U.S. Class I-A stations.

* * * * *

(b) * * *

(1) * * *

(2) Class II stations situated outside the respective 0.5 mV/m 50% contours of co-channel domestic Class I-B stations, to commence PSA operation at 6:00 a.m. local time, and continue this operation until the sunrise times specified in their basic instruments of authorization.

(3) Other Class II stations, where eligible under paragraph (a)(1) of this Section to commence PSA operation with their daytime or critical hours antenna systems either at 6:00 a.m. local time, or at the time of sunrise at the nearest Class I station located east of the Class II station (whichever is later), and continue this operation until the sunrise times specified in their basic instruments of authorization.

(4) Class III stations to commence operation with their daytime antenna systems at 6:00 a.m. local time and to continue such operation until local sunrise times specified in their basic instruments of authorization.

* * * * *

(d) * * *

(2) * * *

(i) For Class II stations operating on Class I channels, other than Class I-A channels, a showing that objectionable interference as determined by the AM Broadcast Technical Standards (Sections 73.182 to 73.190), or by the engineering standards of the NARBA (whichever is controlling), will not be caused within the 0.5 mV/m 50% skywave contour of any domestic Class I-B station or of a Class I-B station in any country signatory to the NARBA.

* * * * *

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Federal Communications Commission.

William J. Tricarico,

Secretary.

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